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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.      | CONFIRMATION NO. |
|--|-------------|----------------------|--------------------------|------------------|
| 10/785,055   | 02/25/2004  | Etsuo Kawate         | AIS-0014                 | 8560             |
| 23353  | 7590        | 11/10/2005           | EXAMINER                 |                  |
| RADER FISHMAN & GRAUER PLLC<br>LION BUILDING<br>1233 20TH STREET N.W., SUITE 501<br>WASHINGTON, DC 20036 |             |                      | STAFIRA, MICHAEL PATRICK |                  |
|  |             |                      | ART UNIT                 | PAPER NUMBER     |
|  |             |                      | 2877                     |                  |

DATE MAILED: 11/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.



A E/L

|                              |                        |                     |  |
|------------------------------|------------------------|---------------------|--|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |  |
|                              | 10/785,055             | KAWATE, ETSUO       |  |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |  |
|                              | Michael P. Stafira     | 2877                |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3,4 and 7 is/are rejected.
- 7) ☒ Claim(s) 2,5,6 and 8 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/22/05; 2/25/04</u> . | 6) <input type="checkbox"/> Other: ____.  |



## DETAILED ACTION

### *Drawings*

1. Figure 7a-7b should be designated by a legend such as --Prior Art-- because only that which is old is illustrated. See MPEP § 608.02(g). Corrected drawings in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 3, 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Niikura ('093).

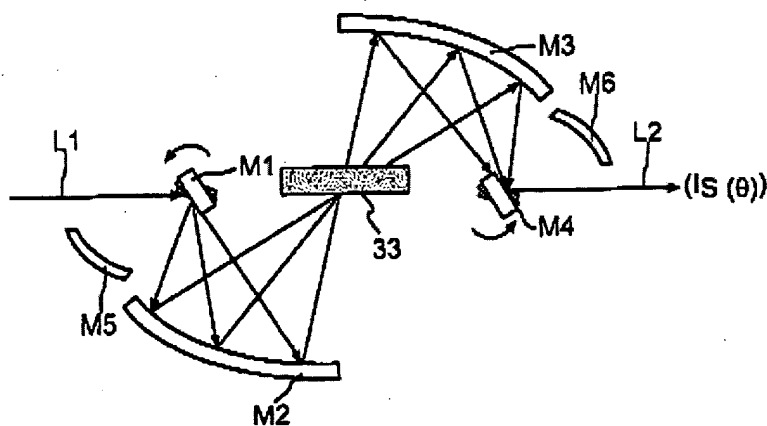
#### **Claim 1**

Niikura ('093) discloses wherein first and second optical paths intersected with each other at an intersection on a sample holder (Fig. 3b, Ref. 33) are set, wherein the first and second optical paths are formed so that light from a light source (Fig. 3b, Ref. L1) is projected so as to be converged on the intersection from an incoming side beam switching mirror (Fig. 3b, Ref.



Art Unit: 2877

M1) selectively switches a direction of the light, via one of first and second converged light reflectors (Fig. 3b, Ref. M2, M3), wherein first and second received light reflectors (Fig. 3b, Ref. M2, M3) that projects the light to an exiting side beam switching mirror (Fig. 3b, Ref. M4) are disposed on the first and second optical paths respectively (See Fig. 3b), and the exiting side beam switching mirror (Fig. 3b, Ref. M4) is capable of switching a direction of the light projected from one of the first and second received light reflectors (Fig. 3b, Ref. M2, M3) so that the light is projected toward a detector (Fig. 3b, Ref. L2), and wherein intensity of light from the sample (Fig. 3b, Ref. 33) in case of face side incidence and back side incidence to the sample can be measured therein (Col. 7, lines 6-10).

**FIG. 3B****Claim 3**

Niikura ('093) further discloses the sample holder (Fig. 3b, Ref. 33) selectively positions sample and a reference sample (Col. 4, lines 42-43) at the intersection of the first and second optical paths, and the incoming side beam switching mirror (Fig. 3b, Ref. M1) and the exiting



Art Unit: 2877

side beam switching mirror (Fig. 3b, Ref. M4) are rotatable with mutual relation, whereby reflectance and transmittance can be measured at arbitrary incident angle.

**Claim 7**

Niikura ('093) further discloses the exiting side beam switching mirror (Fig. 3b, Ref. M4) is independently rotatable.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Niikura ('093).

**Claim 4**

Niikura ('093) discloses the claimed invention except for the reference sample is a through hole. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine Niikura ('093) with reference through hole since it was well known in the art that using a reference through hole allows measurement of the incidence light beam and therefore allowing the measurement signal to be compared to a measurement sample signal. The ratio between the two signals gives an accurate measurement of the sample.




*Allowable Subject Matter*

6. Claims 2, 5, 6, 8 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael P. Stafira whose telephone number is 571-272-2430. The examiner can normally be reached on 4/10 Schedule Mon.-Thurs..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Toatley can be reached on 571-272-2800 ext. 77. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Michael P. Stafira  
Primary Examiner  
Art Unit 2877

November 4, 2005